IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 112 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

TANVI SAJNI FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 112 of 1986
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following two questions have been referred to this Court for its opinion under the provisions of section 256(1) of the Income-tax Act,1961 (hereinafter referred to as 'the Act').

"1 Whether, the Appellate Tribunal is right in law and on facts in confirming the view taken by the Appellate Assistant Commissioner that the assessee trust should be treated as a non-discretionary trust ?

2 Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in confirming the view taken by the Appellate Assistant Commissioner in deleting the interest addition of Rs.5,049/- under section 217(1A) of the Income-tax Act,1961 ?"

2 Though served nobody has appeared for the respondent-assessee whereas Mr.B.B.Nayak has appeared for the revenue.

3 At the time of hearing of the Reference, our attention has been drawn by the learned Advocate to the judgment delivered in I.T.R. No.4 of 1985. A similar question had been referred to in the said Reference in the case of assessee trust. While deciding I.T.R.No. 4 of 1985 this Court had relied upon the judgment delivered in the case of the assessee itself reported in 209 I.T.R.497 for the assessment year 1975-76.

4 In the above circumstances following the said judgment we answer the questions referred to us in the affirmative i.e. against the revenue and in favour of the assessee.

5 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave,J) (D.A.Mehta,J)

m.m.bhatt